(1) Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

Fred Davis

Petitioner,

v.

Hanover Insurance Co.

Respondent.

Petition For Writ Of Certiorari
To The Massachusetts Supreme Judicial Court

PETITION FOR WRIT OF CERTIORARI

Fred Davis
353 Bryant Street
Malden, Massachusetts 02148
(781) 322-8223

ISSUES PRESENT

I.

Should the court grant certiorari to protect the public interest as Hanover Insurace Company is conducting business, writing insurance in the Commonwealth of Massachusetts which is being conducted as means of fraud, unfair and deceptive business practices to swindle monies from the public, therefore, Hanover Insurance Company must be ban from conducting business in the United States of America.

II.

Should the court grant certiorari because the lower court erred in its decision when it based its decision on a prior action which is erroneous.

III.

Should the court grant certiorari because the inferior court violated the Petitioner's United States Constitutional Rights as set forth in the Seventh Amendment to the United States Constitution.

IV.

Should the court grant certiorari because the inferior court erred in law in not ordering judgment against Hanover Insurance Company for failing to answer the petitioner's Complaint.

V.

Should the court grant certiorari because the inferior court erred in its statements of both the introduction and background in its decision.

VI.

Should the court grant certiorari because the inferior court erred in law in not placing sanctions against George R. Suslak for telling falsehoods to the inferior court and committing perjury and costs to the petitioner.

VII.

Should the court grant certiorari because the attorney Christopher Flanagan acted in bad faith with actual intent to deceive and fraud the inferior court. Mr. Flanagan had no legal right to represent Hanover Insurance Company. He was not the attorney of record and he did not file an appearance to represent Hanover Insurance Company.

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Petitioner, Fred Davis, respectfully prays that a Writ of Certiorari issue to review the decision of the Massachusetts Supreme Judicial Court and grant him the following relief: (1) Protect the Public Interest from fraud, unfair and deceptive business practices, by banning Hanover Insurance Company from conducting business throughout the United States of America. (2) Protect the petitioner's Constitutional Rights. (3) Remand the action for jury trial. (4) Place sanctions against George R. Suslak for telling falsehoods to the courts and committing perjury. (5) Restore justice in the Massachusetts Court system, which is competely out of control. Any other relief the Honorable Court deems appropriate.

OPINIONS BELOW

The Norfolk Superior Court dismissed the action (App. p. 12).

The Massachusetts Appeals Court upheld the lower court's decision (App. p. 20).

The Massachusetts Supreme Court denied the Petitioner's Further Appellate Review Application (App. p. 21).

JURISDICTION

January 26, 2000, the Massachusetts Supreme Judicial Court denied the petitioner's Further Appellate Review Application.

This petition is filed within the 90 days of the Massachusetts Supreme Judicial Court's decision.

This Court's jurisdiction is invoked under 28 United States Code.

UNITED STATES CONSTITUTIONAL PROVISIONS INVOLVED

The Seventh Amendment of the United States Constitution provides; "In suits at common law where the value in controversy shall exeed twenty dollars, the right of trial by jury shall be preserved".

STATEMENT OF THE CASE

The petitioner, Fred Davis, is a senior citizen and partially disabled (Hanover Insurance Company is a party to the petitioner's disability).

The respondent, Hanover Insurance Company by means of fraud, unfair, and deceptive business practices swindled monies from the petitioner.

The petitioner issued a 30 day letter to the respondent, pursuant to Massachusetts

General Laws c. 93A. There was no response from the respondent.

As a direct and proximate result of the fraud, unfair and deceptive acts by the respondent Hanover Insurance Company, plaintiff suffered substantial losses of money and pain and suffering, physical and emotional distress.

Respondent engaged in acts of Financial Exploitation which cause a substantial monetary loss to the elderly petitioner which gain would have benefited the elderly petitioner, thereby violating Massachusetts General Laws 19A section 14.

Respondents acts also violated the Crimes Against the Disabled by knowingly and wilfully swindling monies from the disabled.

Petitioner was discriminated against and taken advantage of because of his disability.

September 8, 1997, Petitioner, Fred Davis filed his Complaint against Hanover Insurance Company (App. p. 1).

September 9, 1997, Hanover Insurance Company was served Complaint and Summons.

October 6, 1997, Petitioner, Fred Davis filed Judgment Against Hanover Insurance Company, for failure to answer the Petitioner's Complaint (App. p. 3).

The inferior court did not rule on petitioner's Motion for Judgment Against Hanover Insurance Company, for failure to answer the Petitioner's Complaint.

October 6, 1997, petitioner, Fred Davis filed Sanctions Against George R. Suslak For

Telling Falsehoods to the Court and Perjury Charges Against George R. Suslak. (App. p. 5).

The inferior court did not rule on petitioner's Motion Sanctions Against Attorney George R. Suslak For Telling Falsehoods to the Court and Perjury Charges Against George R. Suslak.

October 14, 1997, Respondent, Hanover Insuance filed a Motion To Dismiss.

Petitioner filed timely opposition.

November 11, 1997. Petitioner filed Sanctions Against Attorney George R. Suslak for Continuing to Tell Falsehoods to the Court and Costs.

The inferior court did not rule on petitioner's Motion For Sanctions Against Attorney George R. Suslak, For Continuing to Tell Falsehoods to the Court and Cost.

March 10, 1998, Judge L. Doerfer dismissed action (App. p. 12).

The Massachusetts Appeals Court upheld the lower court's decision (App. p 20).

The Massachusetts Supreme Judicial Court denied the Petitioner's Further Appellate Review Application (App. p.21).

Now the petitioner, Fred Davis, requets the Honorable Court to grant a Writ of Certiorari.

ARGUMENT

REASONS FOR GRANTING PETITION

I. CERTIORARI SHOULD BE GRANTED TO PROTECT THE PUBLIC INTEREST BY BANNING THE RESPONDENT, HANOVER INSURANCE COMPANY FROM CONDUCTING BUSINESS IN THE UNITED STATES OF AMERICA

Respondent, Hanover Insurance Company is engaged in a business that is conducted by means of fraud, unfair and deceptive business practices along with the famous **BAIT AND SWITCH ACTS** to swindle monies from the public.

Hanover Insurance Company employes their famous **BAIT AND SWITCH ACTS:** (1) Formulate a release and you will obtain your money (App. P. 9), after Hanover Insurance Company lays the foundation of the **BAIT AND SWITCH ACTS** NEXT: (2) Now sign the release and you will obtain your money within 30 days (App. p. 4). Now Hanover Insurance Company keeps the release and does not pay the individuals.

Individuals do not get their money, therefore, they inquire to why they did not receive their money.

Now comes the switch "we can't pay you there's an attorney's lien".

These statements made by Hanover Insurance Company is a complete fraud.

Evidence clearly shows Davis received the famous **BAIT AND SWITCH ACTS**, fraud, unfair and deceptive business practices from Hanover Insurance Company.

(1) Provide a release in the amount of $20,000.00 (App. P. 9) (There is nothing in the formulation of the release that states there is an attorney's lien).

(2) Next step of the bait: sign the release for $20,000.00. and the draft is to be paid within 30 days (App. p. 4) (There is nothing in the release that states that there is an attorney's lien).

September 20, 1991, petitioner signs release for $20,000.00, Hanover Insurance Company keeps the release and does not pay the petitioner.

(3) Now comes the switch: when petitioner asks for his money Hanover Insurance Company says: "There is an attorney's lien".

September 20, 1991 and pursuant to the terms of the release (App. P. 4), draft was to be paid within 30 days making payment due on October 19, 1991, however, this was not the case.
Upon researching the docket entry sheets in the court, Davis discovered that approximately seven months after he signed the release there appears to be an act of a cover-up.

There is entry of a lien filed on March 2, 1992, viewing the document of the lien it does not bear the true signature of Stuart Ravech, nor is there any certificates of service that all parties were notified of such a document.

In addition, no one knows who made the entry in the first place.

The facts and evidence clearly reveal that there was no lien on September 20, 1991 when

Davis signed the release.

There was no lien on October 19, 1991 when the draft was to be mailed to Davis.

The evidence clearly shows that a fraud lien was placed approximately seven months after Davis signed the release, in order to steal monies from him.

Since September 20, 1991, including the present Davis has not received one penny from Hanover Insurance Company.

Massachusetts General Laws c. 176D §3§(9) f inserted by St. 1972, c 543 §1, provides that it is an unfair claim settlement practice for an insurer to fail "to effectuate prompt, fair and equitable settlements of claims in which liability has becomes reasonably clear". Massachusetts General Laws c. 93A, § 2 (a) (inserted by St. 1967 C. 813 § (1), covers such insurance practices in its prohibition of "unfair or deceptive acts or practices in the conduct of of any trade or commerce". **SEE DODD v. COMMERCIAL INSURANCE COMPANY** 373 Mass at 78 "provides for recovery of up to three not less than two times actual damages...."

Hanover Insurance Company admitted liability, however, they used means of fraud to inform the court that the case was settled.

Hanover Insurance Company has submitted no evidence to the court to substantiate that the case was settled and payment was made to Davis.

The respondent, Hanover Insurance Company is engaged in unfair and deceptive acts and

practices in the conduct of their trade/commerce.

Petitioner is entitled to recovery up to three times his damages by law.

Massachusetts General Law Chapter 19A § 14 "Financial Exploitation" "an act or ommission by another person, which causes a substantial monetary loss to an elderly person, which gain would other wise benefit the elderly person".

Petitioner is an elderly person and is a victim of Financial Exploitation by the Hanover Insurance Company acts.

Hanover Insurance Company has caused the petitioner a gross monetary and property loss which gain would have benefit the petitioner.

Hanover Insurance Company has caused the petitioner a gross amount of medical bills leaving him with a permanent partial disability and unable to care for himself.

Based on the foregoing facts and evidence Hanover Insurance Company has been conducting their **BAIT AND SWITCH ACTS FOR SEVERAL YEARS**, stealing monies from the public.

Now is the time for Hanover Insurance Company to pay for their acts of fraud, unfair and deceptive business practices.

Hanover Insurance Company has violated the Massachusetts General Laws C. 93A, Massachusetts General Laws Chapter 19A § 14 "Financial Exploitation" of the elderly and Crimes Against the disabled.

Hanover Insurance Company must be banned from conducting business in the United States

of America, for the protection of the public interest from this nightmare company, Hanover Insurance Company.

II. CERTIORARI SHOULD BE GRANTED BECAUSE THE LOWER COURT ERRED IN ITS DECISION WHEN IT BASED ITS DECISION ON A PRIOR ACTION WHICH IS ERRONEOUS

The inferior court erred in its decision when it based its decision on a prior action which is erroneous.

Petitioner's Complaint clearly states the cause of action deals with Hanover Insurance Company using means of fraud, unfair and deceptive practices to swindle money from a senior citizen (App. p. 1).

Hanover Insurance Company engaged in Financial Exploitation of a senior citizen, thereby violating Massachusetts General Laws 19A section 14.

Hanover Insurance Company engaged in Crimes against the disabled which caused the petitioner losses of monies because he is unable to work, medical bills, pain, suffering physical and emotional distress.

The inferior court further erred when it referred to an attorney's lien there is no attorney's lien in this action.

September 20, 1991, the petitioner Davis signed a release which involved Hanover Insurance Company, insured Anthony Lauria (App. p. 4).

Mark Mahnken of the law firm of Driscoll, Gillespie and Stanton formulated the release in

which he wanted Hanover Insurance Company's name on the release the court can clearly see that there is no lien whatsoever in the formulating the release (App. p.9).

April 8, 1991, Stuart Ravech, filed a Motion to Withdraw. He did not ask for any monies nor did the court order any monies to him.

Upon researching a prior case the petitioner discovered that approximately seven months after Davis signed a release in a prior action there is an entry of a lien filed on March 2, 1992, which does not bear the true signature of Staurt Ravech nor is there any certificate of services that all parties were notified of such a document.

No legal lien exist in a prior action nor is there any lien on this action.

A lien was merely brought up by attorneys George Suslak and Christopher Flanagan to fraud and deceive the court.

George Suslak and Christopher Flanagan made statements with the actual intent to act in bad faith, mislead, deceive and fraud the court, "an act done with actual intent to mislead, deceive and fraud another is an act in bad faith **SEE GROH v. VIGLET** 34 Ohio Law R 132, **HILGENBERG v. NORTHRUP** 33 N.E. 786, 787, "bad faith and fraud are synonymous".

The cause of action is clearly stated in Davis' Complaint, moreover, where, as here the petitioner is proceeding pro se, the Complaint and other factual allegation should be read liberally and less stringent than formal pleading drafted by lawyers, **HUGH v.ROWE** 449 U.S.5,9

(1980).

Failure of the Complaint to set forth specific facts to support its general allegation was not sufficient ground for dismissal of the suit, civil procedure does not require to set out in detail the facts upon which it basis its claim **SEE CONLEY v. GIBSON** 355 U. S. 14, **C. F. MATY v. GRASSELLI CHEMICAL CO.,** 303 U. S. 197, the court rejects the approach that pleading is a game of skill in which one misstep may be decisive to the outcome and accept the principle that the purpose of pleadings is to facilitate a proper decision on the merits. In, **LECLAIR v. SILBERLINE** 379 Mass 21 at 23 the evidence must be re-examined in light most favorable to the plaintiff. In, **HAINES v. KERNER** 404 U. S. 519 Accordingly, although we intimate no view whatsoever on the merits of petitioner's allegation, we conclude that he is entitled to an opportunity to offer proof. The judgment is revered and the case is remand for further proceedings consistent herewith, Reverse and Remand.

III. CERTIORARI SHOULD BE GRANTED BECAUSE THE INFERIOR COURT VIOLATED THE PETITIONER'S UNITED STATES CONSTITUTIONAL RIGHTS AS SET FORTH IN THE SEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

Seventh Amendment to the United States Constitution: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved"

Davis paid a court cost and sheriff costs to have his action tried before a jury which involves the sum of $500,000.00, plus triple damages, legal fees and costs pursuant to the Massachusetts General Laws Chapter 93A and any other relief the Court deems appropriate.

Therefore, Davis is entitled to have a trial by jury under the United States Constitution.

Davis was deprived of his Constitutional rights as set forth under the United States Constitution.

IV. CERTIORARI SHOULD BE GRANTED BECAUSE THE INFERIOR COURT ERRED IN LAW IN NOT ORDERING JUDGMENT AGAINST HANOVER INSURANCE FOR FAILING TO ANSWER THE PETITIONER'S COMPLAINT

Massachusetts Rules of Civil Procedure Rule 12 "A defendant shall serve his answer within 20 days after the service of the summons and Complaint upon him".

September 9, 1997, Davis served upon Hanover Insurance Company Complaint and Summons.

October 6, 1997, Davis files Judgment Aganist Hanover Insurance Company for failure to answer petitioner's Complaint (App. p. 3).

Based on the law the court erred in not placing a Default Judgment against the Hanover Insurance Company.

The above facts and evidence clearly fortifies the fact that the Massachusetts Court System is completely out of control.

"Massachusetts Rules of Civil Procedure" is completely worthless in the Courts of Massachusetts.

Massachusetts Rules of Civil Procedure is not used by the courts in Massachusetts,in Massachusetts, these rules are merely a myth.

V. CERTIORARI SHOULD BE GRANTED BECAUSE THE INFERIOR COURT ERRED IN ITS STATEMENTS OF BOTH THE INTRODUCTION AND BACKGROUND IN ITS DECISION

The inferior court made the following erroneous Statement: "For the reasons set forth below, the defendant's motion to dismiss will be allowed."

There are no reasons below.

The Court made the following erroneous statements: "Before the settlement was final, Davis' previous lawyer in the case, Stuart Ravech, served the parties with a notice of an attorney's lien. As a result, Hanover insisted that any settlement include the name of Stuart Ravech"

(1) September 12, 1991, Mark F. Mahnken, from the law firm of Driscoll, Gillespie & Stanton formulated the contract which involved the action brought against Anthony Lauria and is not applicable to this action, however, Hanover Insurance Company did not insist that any settlement include the name of Stuart Ravech **SEE (App. p. 9). AND (App. p. 4).** None of these documents formulated by Hanover Insurance insist that any settlement include the name of Stuart Ravech.

Mr. Mahnken wanted the name of Hanover Insurance Company's name on the release, in no way was the name of Stuart Ravech named in any manner or shape.

(2) September 20, 1991 Davis signed the release (App. p. 4). Hanover Insurance Company has the release in their possession since September up to including the present, although the release states payment was to be made in 30 days Hanover has kept the release and not paid Davis, in addition Hanover Insurance Company refuses to return the original release and all copies in their possession, however, this issue is not applicable to the action before this Honorable Court.

SEE UNITED STATES v. WINDSTAR 95-865, "An agreement is an agreement and cannot be changed in midstream".

(3) April 8, 1991, Stuart Ravech, filed a Motion to Withdraw, he did not ask for any monies nor did the court order an monies to him.

Upon researching the prior case the petitioner discovered that approximately seven months after he signed a release in this prior action there is an entry of a lien filed on March 2, 19992, which does not bear the true signature of Stuart Ravech nor is there any Certificates of Services that all parties were notified of such a document, there is no legal lien in the prior action nor is there a lien in this action.

The inferior court's decision which consists of eight pages does not make any sense, since the hearing was for approximately 20 minutes and none

none of the issues pertaining to this action were addressed by the court including Pettioner's Judgment Against Hanover Insurance Company for failure to answer petitioner's complaint.

VI. CERTIORARI SHOULD BE GRANTED BECAUSE THE INFERIOR COURT ERRED IN LAW IN NOT PLACING SANCTIONS AGAINST GEORGE R. SUSLAK FOR TELLING FALSEHOODS TO THE INFERIOR COURT AND COMMITTING PERJURY AND COSTS

Canon 1 Disciplinary Rules DRI-102 (A) A lawyer shall not: (4) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation. (5) Engage in conduct that is prejudicial to the administration of justice.

General Laws 211 § 38 Attorney's Oath: "Your (name) solemnly swear that you will do no falsehood, nor consent to the doing of any in Court".

Mr. Suslak made the following false statement to the court: "M.G.L. c 93A must be dismissed for failure of Davis to prove the presentation of a 30 day demand letter...." This statement made by Mr. Suslak is false.

Davis served a 30-day demand letter to Hanover Insurance Company.

Mr. Suslak is telling falsehoods to the court by stating "...proceedings has been generated by Davis in an attempt to obtain settlement while escaping the attorney's lien". This statement is a complete lie.

Mr. Suslak was not the attorney who formulated

a prior action release. Attorney Mark F. Mahnken of the law firm Driscoll, Gillespie and Stanton, which clearly states that there is no attorney lien (App. p. 9), moreover, this is not the issues that is now before the court.

Mr. Suslak is telling falsehoods to the court, misrepresenting the facts to the court in order to obstruct justice, he is not addressing the issues of this action but addressing issues of another party Anthony Lauria, as the court can clearly see the caption in this action is not Anthony Lauria, but Hanover Insurance Company, who is the respondent in this action.

Mr. Suslak told falsehoods to the Court, acting in bad faith with the actual intent to mislead and deceive the court, **SEE GROH v. VIGLET** 34 Ohio Law R 132 "an act done with actual intent to mislead or deceive another is an act in bad faith" **HILGENBERG v. NORTHRUP** 33 N.E. 786,787, 134 In 92 "Bad faith and fraud are synonymous".

Mr. Suslak is further telling falsehoods, engage in conduct involving dishonesty, fraud, deceit and misrepresentation, when he makes the following statement to the court "it must be noted that Hanover has repeatly offered to pay Davis the $20,000.00". This statement is false. Mr. Suslak shows no evidence of such a claim.

George R. Suslak committed perjury in his Certificate of Service. He committed perjury by stating under oath that he served document to the petitioner on September 29, 1997, however evidence show that documents were mailed to Davis on

October 1, 1997 (App. p. 11).

This act was done to deprive the petitioner sufficient time to oppose his document, which Davis is entitled to the complete time frame under the Massachusetts Rules of Civil Procedure.

The facts clearly show that throughout this action Mr. Suslak has been guilty violating the canon Rules and the Attorney's Oath.

Therefore, the inferior court erred in not placing Sanctions and Costs against Mr. Suslak.

In addition, Mr. Suslak committed perjury, therefore, Mr. Suslak should be barred from practicing law in the United States of America.

VII. CERTIORARI SHOULD BE GRANTED CHRISTOPHER FALANAGAN ACTED IN BAD FAITH WITH THE ACTUAL INTENT TO DECEIVE AND FRAUD THE COURT

January 20, 1998, Mr. Flanagan represented himself "as the moving party", however, he is not the attorney of record nor is there any Notice of Appearance in the court record, therefore, he had no legal right to represent the repondent, Hanover Insurance Company, before Judge Doerfer and Judge Doerfer erred in allowing him to represent Hanover Insurance

Mr. Flanagan acted in bad faith with the actual intent to deceive and fraud the court.

Mr. Flanagan made the following false statement to the court "..due to an attorney's lien"

This above-cited statement is false. Mr.

Flanagan is not the attorney of record, moreover, he was not the attorney who formulated a prior action release.

Flanagan continued to make false statements pertaining to a prior action which was formulated by Mark Mahnken which is not applicable to this action.

The facts indicate that there is a conspiracy in the filing of what appears to be a fraudulent lien in a prior action, which does not bear the genuine signature of Stuart Ravech.

This matter of a lien in a prior action is pretty strange as the respondent, Hanover Insurance Company, George R. Suslak and Christopher Flanagan are the only ones who refer to any attorney lien from a prior action in which there is no lien formulated by attorney Mark Mahnken.

Justice must be restored in Massachusetts and let it begin from here.

CONCLUSION

WHEREFORE, Petitioner, Fred Davis respectfully prays that a Writ of Certiorari issue to review the decision of the inferior Massachusetts Courts in order to correct the miscarriage of justice that was inflicated upon him and protect the public interest.

Respectfully submitted,

Fred Davis
353 Bryant Street
Malden, Ma 02148
(781) 322 8223

Fred Davis

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

DEDHAM SUPERIOR COURT
CIVIL BUSINESS
CIVIL ACTION
NO. 97 1716

FRED DAVIS, PLAINTIFF

vs.

HANOVER INSURANCE COMPANY,
DEFENDANT

COMPLAINT

Parties

Plaintiff, Fred Davis P. O. Box 721 Everett, Ma 02149, county of Middlesex.

Defendant, Hanover Insurance Company Conducting business at 35 Braintree Hill Park Braintree, Ma 02184, County of Norfolk.

Facts

The defendant, Hanover Insurance Company engaged in acts of unfair and deceptive business practices.

The defendant, Hanover Insurance Company engaged in acts of Financial Exploitation of a senior citizen.

The defendant, Hanover Insurance Company engaged in acts against the disabled.

CAUSE OF ACTION

The plaintiff, Fred Davis, is a senior cit-

izen and partially disable.

The defendant, Hanover Insurance Company by means of fraud, unfair, and deceptive business practices swindled monies from the plaintiff.

The plaintiff issued a 30 day letter to the defendant pursuant to Massachusetts General Laws c. 93A. There was no response from the defendant.

As a direct proximate result of fraud, unfair and deceptive acts by the defendant Hanover Insurance Company, plaintiff suffered substantial losses of money and pain and suffering, physical and emotional distress.

Defendant engaged in acts of Financial Exploitation which caused a substantial monetary loss to the elderly plaintiff which gain would have benefited the elderly plaintiff thereby violating Massachusetts General Law 19A section 14.

The defendants acts also violated the Crimes Against the Disabled, knowingly and wilfully swindling monies from the disabled.

Plaintiff was discriminated against and taken advantage of because of his disability.

RELIEF FROM THE COURT

WHEREFORE, the plaintiff requests the sum of $500,000.00, plus triple damages, legal fees and any other relief the court deems appropriate.

S/Fred Davis
Fred Davis Plaintiff
P.O. Box 721
Everett, Ma 02149
(781) 322 8223

App. 3

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

DEDHAM SUPERIOR COURT
CIVIL BUSINESS
CIVIL ACTION NO. 97-1716

FRED DAVIS, PLAINTIFF

vs.

HANOVER INSURANCE COMPANY,
DEFENDANT

JUDGMENT AGAINST HANOVER INSURANCE COMPANY

Now comes the plaintiff, Fred Davis in the above-cited action and moves the court to order judgment against the defendant, Hanover Insurance Company for failure to answer the plaintiff's complaint.

September 9, 1997, plaintiff served upon the defendant, Hanover Insurance Company, Summons and Complaint which was delivered to the defendant by the sheriff in the Norfolk County.

Defendant, Hanover Insurance Company had twenty days to serve an answer to the Complaint to the plaintiff, however, the defendant did not answer the Plaintiff's Complaint.

Therefore, based on the law, facts and evidence the plaintiff moves the court to order judgment against Hanover Insurance Company in the amount of $1,500,000.00 plus costs.

S/Fred Davis
P.O. Box 721
Everett, Ma 02149

App. 4

RELEASE

September 20, 1991, in Consideration of Twenty thousand ($20,000.00) dollars to me paid by Anthony Lauria and Hanover Insurance Company the receipt whereof is hereby acknowledged I hereby remise, release and forever discharge the said Anthony Lauria and Hanover Insurance Company from all debts, demands, actions, causes of action, suit, dues, sum and sums of money, accounts, reckonings, bonds. specialties, covenants, contracts, controversies, agreements, promises, doings, omissions, variances, damages, extent, executions and liabilities and any and all other claims of every kind, nature and description whatsoever, both in law and equity, which against the said Anthony Lauria and Hanover Insurance Company or their heirs, executors, administrators, successors or assigns I now have or ever had from the beginning of the world to this date and more especially on account of personal injuries sustained by me on February 11, 1987 and the lawsuit now pending in the Boston Municipal Court, docket number T-41026, The settlement draft is to be made payable to Fred Davis and his attorney, Robert T. Abrams. The draft is to be paid within 30 days.

Executed as a sealed instrument this day and year above written. S/Fred Davis

Signed in the presence of
S/ Robert T. Abrams

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

DEDHAM SUPERIOR COURT
CIVIL BUSINESS
CIVIL ACTION NO. 97-1716

FRED DAVIS, PLAINTIFF

vs.

HANOVER ISNURANCE COMPANY,
DEFENDANT

SANCTIONS AGAINST ATTORNEY GEORGE R. SUSLAK FOR TELLING FALSEHOODS TO THE COURT AND PERJURY CHARGES AGAINST GEORGE R. SUSLAK

Now comes the plaintiff, Fred Davis, in the above-cited action and files sanctions against George R. Suslak for telling falsehoods to the Court, which violates the Massachusetts Canon Rules and the Massachusetts Attorney's Oath General Laws 221§38.

George R. Suslak committed perjury in his Certificate of Service. He committed perjury stating that he served documents to the plaintiff on September 29, 1997, however, evidence shows that documents were mailed to the plaintiff on October 1, 1997.

MEMORANDUM IN SUPPORT OF SANCTIONS AGAINST ATTORNEY GEORGE R. SUSLAK FOR TELLING FALSEHOODS TO THE COURT AND PERJURY CHARGES AGAINST GEORGE R. SUSLAK

Canon 1 - DISCIPLINARY RULES

DRI-102 MISCONDUCT

(A) A lawyer shall not:

(4) Engage in conduct involving dishonest, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudical to the administration of justice.

GENERAL LAWS 221 § 38 ATTORNEY'S OATH

"You (name)solemnly swear that you will do no falsehood, nor consent to the doing of any in court"

Mr. Suslak made the following statement to the court: "M.G.L. c.93A must be dismissed for failure to prove the presentation of a 30-day demand letter"

This statement is a falsehood, as the plaintiff did serve a 30-day demand letter to Hanover Insurance Company.

Mr. Suslak is telling falsehoods to the court acting in bad faith with actual intent to mislead and deceive the court, **SEE** GROH v. VIGLET 34 Ohio Law R 132 "an act done with actual intent to mislead or deceive another is an act in bad faith." **SEE** HILGENBERG v. NORTHRUP 33 N.E. 786, 787, 134 92 "Bad faith and fraud are synonymous".

Mr. Suslak is misrepresenting the facts to the court in order to obstruct justice he is not addressing the issues of this action by addressing issues of another party Anthony Lauria, as the court can clearly see the caption in this action is not Anthony Lauria, but the Hanover Insurance Company, who is the defendant in this action.

Mr. Suslak is telling falsehoods to the court by stating"....proceedings has been generated by Davis in an attempt to obtain settlement

proceeds while escaping the attorney's lien". The statement is completely a lie.

He was not the attorney who formulated the the contract. Attorney Mark F. Mahnken formulated a contract which clearly states that there is no attorney lien **attached plaintiff's Exhibit "A".** Moreover, these are not the issues before the court.

The issues before the court are unfair and deceptive business practices, Financial Exploitation of a senior citizen and acts against the disable.

Mr. Suslak is telling falsehoods, engaging in conduct involving dishonesty, fraud, deceit and misrepresentation, when he makes the following statement to the court "It must be noted that Hanover has repeatly offered to pay Davis the $20,000.00 settlement" this statement is false.

Mr. Suslak shows no evidence of such a claim.

Attorney George R. Suslak, committed perjury his certificate of Service states as follows:

CERTIFICATE OF SERVICE

"I, George R. Suslak, attorney for the Defendant, hereby certify that an exact copy of the foregoing has been mailed, postage prepaid, to the Plaintiff:

Mr. Fred Davis
P.O. Box 721
Everett, Ma 02149

Defendant's Motion To Dismiss Pursuant to Rule 12 (b)(6) and Motion For Sanctions.

Dated 929/97 S/George R. Suslak, Esquire

SEE: attached Plaintiff's Exhibit "B".

The document was not mailed to the plaintiff on September 29, 1997, the document was mailed to the plaintiff on October 1, 1997, **SEE attached postmark date Plaintiff's Exhibit "C".**

This act was done to deprive the plaintiff sufficient time to oppose the document, which he is entitled to under the Massachusetts Rules of Civil Procedure.

The facts clearly show that Mr. Suslak is guilty of violating the Canon Rules and the Attorney's Oath.

WHEREFORE, the plaintiff moves that sanctions against George R. Suslak be placed upon him and he is to be removed from this action.
Perjury charges invoked upon him, and he is to be barred from practicing law in the state of Massachusetts and any other state within the United States of America.

By,
S/Fred Davis
P.O. Box 721
Everett, Ma 02149

CERTIFICATE OF SERVICE -

I, certify that I mailed a true copy of Sanctions Against Attorney George R. Suslak for Telling Falsehoods To The Court and Perjury Charges Against George R. Suslak and Memorandum in Support to: George R. Suslak, Stanton & Lang 200 Broadway P.O. Box 1080 Lynnfield, Ma 01940 postage prepaid.
Date 10-6-97 S/Fred Davis

DRISCOLL, GILLESPIE & STANTON
ATTORNEYS AT LAW

September 12, 1991

Robert T. Abrams
50 Union Street
Newton, Ma 02159

Re: Fred Davis
VS: Anthony Lauria
No: T-41026

Dear Attorney Abrams:

I assume that by now you are back from your vacation and are in a position to resolve the above captioned matter.

Kindly provide a Release in the amount of $20,000.00 and I would appreciate your having Hanover Insurance Company name on the Release, also.

Your assistance is most appreciated.

Thank you.

Very truly yours,

DRISCOLL, GILLESPIE & STANTON

S/Mark F. Mahnken

cc: Hanover Insurance Co.
file: 38-054519-30

PLAINTIFF'S EXHIBIT "A"

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. DEDHAM SUPERIOR COURT
C.A. NO: 97-01716

FRED DAVIS,
Plaintiff

VS.

HANOVER INSURANCE COMPANY,
Defendant

CERTIFICATE OF SERVICE

I, George R. Suslak, attorney for the defendant, hereby certify that an exact copy of the foregoing has been mailed, postage prepaid, to the Plaintiff:

Mr. Fred Davis
P.O. Box 721
Everett, Ma 02149

Defendant's Motion To Dismiss Pursuant to Rule 12 (b)(6) and Motion for Sanctions.

DATED: 9/29/97

S/George R. Suslak, Esquire
STANTON & LANG
200 Broadway P.O. Box 1080
Lynnfield, Ma 01940
(617) 595-1440
BBO $541921

PLAINTIFF"S EXHIBIT 'B"

POSTMARK DATE Oct-1-97
Lynnfield, Ma

STANTON & LANG
ATTORNEYS AT LAW
P.O. BOX 1080
LYNNFIELD WOODS OFFICE PARK
U.S. ROUTE 1, 200 BROADWAY SUITE 102
LYNNFIELD, MA 01940

Mr. Fred Davis
P.O. Box 721
Everett, Ma 02149

PLAINTIFF'S EXHIBIT "C"

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
No. 97-01716

FRED DAVIS

vs.

HANOVER INSURANCE COMPANY

MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S MOTION TO DISMISS AND MOTION FOR SANCTIONS

INTRODUCTION

On January 20, 1998, this case was before the court for hearing on the motion of the defendant, Hanover Insurance Company ("Hanover"), to dismiss pursuant to Mass. R. Civ. P. 12(b)(6) and for sanctions pursuant to G.L. c. 231 §6(f). In support of its motion, Hanover argues that the Complaint must be dismissed because the plaintiff, Fred Davis("Davis"), can prove no set of facts in support of his claim which would entitle him to relief; and thus, the complaint should be dismissed for failure to state a claim.

In his opposition, Davis argues that Hanover's motion should be stricken because (1) it does not comply with rule 9A and 9C, (2) it is brought in bad faith and with actual intent to deceive and defraud the court; (3) it is a continuing attempt to financially exploit him; (4) it is brought with intention to deprive him of his rights under the United States and Massachusetts Constitutions; and (5) it is brought to hurt and harm him.

For reasons set forth below, the defendant's motion to dismiss will be allowed.

BACKGROUND

This matter stems from an automobile accident which allegedly occurred on February 11, 1987. 1 Taking the facts in light most favorable to Davis they are as follows: Davis is a partially disabled senior citizen residing in Malden, Massachusetts. Hanover is an Insurance Company with a office in Braintree, Massachusetts.

On or about January 18, 1990, Davis filed a complaint in the Suffolk Superior Court against Anthony Lauria ("Lauria"), the driver of a vehicle involved in the accident referred to above. at that time, Hanover was the insurer for Lauria. On February 12, 1991, the matter was remanded to the Boston Municipal Court ("BMC") and a trial was scheduled for October 9, 1991, On October 9, 1991. however, the case was reported settled and an order entered that the case would be dismissed as to all claims on November 12, 1991, unless the parties filed an agreement for judgment. Because no agreement for judgment was filled, the case was dismissed, as ordered on November 12, 1991.

Sometime in 1991, however, a settlement was reached between Davis and Hanover in the amount of $20,000.00. Before the settlement was final Davis' previous lawyer in this case, Stuart Ravech. served the parties with a notice of an attorney's lien. As a result, Hanover insisted that any settlement include the name of Stuart

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1 For a complete understanding of this decision, the court recites the lengthy procedural gleaned from the record in this case.

Ravech.

In 1993, Davis filed a lawsuit in Norfolk Superior Court against Hanover to collect the entire $20,000.00 settlement amount. In that Complaint Davis alleged that Hanover breached its contract with him, engaged in unfair and deceptive business practices within the meaning of G.L c. 93A, tried to cheat him out of money due to him and acted in a manner designed to harass, hurt and harm him. At that time, Hanover again offered to pay Davis the settlement amount of $20,000.00 subject to an attorney's lien filed by Stuart Ravech; and, filed a counter claim against Davis seeking declaratory and injunctive relief. Subsequently, Hanover filed a motion for summary judgment. The motion was allowed in its totality.

Davis then attempted to appeal the matter to Massachusetts Appeals Court. However, the Superior Court record could not be assembled because Hanover's counterclaim had not been resolved. Subsequently, Hanover voluntarily dismissed its counterclaim. On June 14, 1996, the Appeals Court affirmed the judgment of the Superior Court.

At that point, Davis sought further appellate review by the Supreme Judicial Court, which was denied on July 24, 1996.

Next Davis filed a petition for writ of certiorari with the United States Supreme Court, which was denied on January 6, 1997. A motion for rehearing, was denied by the United States Supreme Court on February 18, 1997.

On August 16, 1996, and while his original action was pending in the Norfolk Superior Court,

Davis filed a complaint against Hanover and its Chairman of the Board, John F. O"Brien, in the United States District Court for the District of Massachusetts. This complaint sought injunctive and monetary relief stemming from alleged violations of state and federal constitutional rights as a result of Hanover's insistence that Davis' settlement was subject to the attorney's lien. On Hanover's motion, the U.S. District Court for the District of Massachusetts dismissed the Complaint on May 17, 1996.

Davis then appealed the matter to the First Circuit Court of Appeals. On October 11, 1996, that court affirmed the District Court judgment.

Davis next sought certiorari of the decision to the United States Supreme Court, which was denied on March 3, 1997. A motion for rehearing was subsequently denied by that court.

On May 7, 1997, Davis filed a motion for scheduling a trial date in the BMC with regard to the matter that was dismissed by that court on November 12, 1996. The motion was denied.

Subsequently Davis retransferred the matter to the Suffolk Superior Court. On Hanover's motion, that court vacated the retransfer.

On September 8, 1997, Davis filed the instant Complaint in which he alleges that Hanover engaged in acts of unfair and deceptive business practices within the meaning of G. L. c 93A, engaged in acts designed to financially exploit him, and engaged in acts against the disabled in violation of G.L. c. 19A, § 14.

DISCUSSION

When evaluating the sufficiency of a complaint pursuant to Mass. R. Civ. P. 12 (b) (6), the court must accept as true the sell pleaded factual allegations of the complaint, as well as any inferences which can be drawn therefrom in the plaintiff's favor. Fairneny v. Savogran Co.,422 Mass. 469, 470 (1996); Eval v. Helen Broadcasting Corp.411 Mass 426, 429 (1991) and cases cited. A Complaint is not subject to dismissal if it would support relief on an theory of law. Whitinsville Plazan Inc. v. Kotseas,378 Mass. 85, 89 (1979). All inferences should be drawn in the plaintiff's favor "so as to do substantial justice." Ourfalian v. Aro Mfg Co, 31 Mass. App. Ct. 294, 296 (1991). Thus "the Complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim which would entitled him or her to relief" Nader v. Citron, 372 Mass. 96, 98 (1977).

After careful examination of the present Complaint, this court finds that the instant action is substantially identical to the Complaint brought by Davis, docket #93-00575, on March 10, 1993. Thus, based on the doctrine of Res Judicata, the Complaint must fail as to all counts.

The doctrine of res judicata encompasses the doctrines of claim and issue preclusion. See Heacock v. Heacock 402 Mass. 21, 23 n.2(1988). The applicable doctrine in this case, the doctrine of claim preclusion, makes a valid, final judgment conclusive on the parties and their privies, and bars further litigation of all matters that were or should have been adjudicated in the action.

See Heacock, 402 Mass. at 23, citing, Franklin v. North Weymouth Co-op Bank, 283 Mass. 275, 279-80 (1933), and cases cited. This is so even though the claimant is prepared in a second action to present different evidence or legal theories to support his claim, or seeks different remedies. See Mackintosh v. Chambers 285 Mass. 594, 596-97 (1934) and cases cited. Restatement (Second) of Judgment § 25 (1980). The claim is the same for res judicata purposes if it is derived from the same transaction or series of connected transactions. Saint Louis v. Baystate Med. Center, Inc. 30 Mass. App. Ct. 393, 399 (1991) citing, Boyd v. Jamaica Plain Co-op Bank,7 Mass. App. Ct. 153. 163-64 (1979). The doctrine is a ramification of the policy considerations that underlie the rule against splitting a cause of action, and is based on the idea that the party to be precluded has had the incentive and opportunity to litigate the matter fully in the first lawsuit. Foster v. Evans 384 Mass. 687, 696 (1981). It is settled that a summary judgment entered, as was the one in the first action, will have preclusive effect. Fluhr v. Allstate Ins. Co.15 Mass. App. Ct. 983, 984 (1983).

Clearly, the doctrine of res judicata, or claim preclusion, applies here where both actions are based on the same claim, the matter was decided on summary judgment against Davis and he had the incentive and the opportunity to fully litigate the matter at that time.

The instant complaint describes the same claims which were at the core of the first action,

namely, that Hanover engaged in unfair and deceptive business practices within the meaning of G.L. c. 93A, and engaged in acts designed to financially exploit him.

The claims that Hanover 'violated crimes against the disabled by knowingly and willfully swindling monies from the disabled," and that Davis was "discriminated against and taken advantage of because of his disability," are both derived of the transaction, namely, the failure of Hanover to pay to Davis the entire $20,000.00 settlement amount without accounting for the attorney's lien. There is nothing in the instant complaint that Davis did not bring, or could not have brought, in the previous action. Thus, this court finds that Davis cannot now resuscitate, before this court, a claim that he brought, or could have brought, in the earlier proceedings in the Norfolk Superior Court docket # 93-00574. Indeed, "public policy dictates that there be an end of litigation: that those who contested an issue shall be bound by the result of contest and, that matters one tried shall be considered forever settled as between the parties". See Wright Mach. Corp. v. Seaman-Andwall Corp., 364 Mass. 683, 688 (1974), quoting, Baldwin v. Iowa State Traveling Men's 283 U.S. 522, 525 (1931).

With regard to the motions of the plaintiff and the defendant for sanctions, no sanctions will be imposed at this time, However, the plaintiff has had full consideration of his complaint. Should the plaintiff, Fred Davis, bring another duplicative complaint against this defendant, Hanover

Insurance Company, sanctions should be considered at that time.

ORDER

For the reasons stated above, it is hereby ordered that the motion of the defendant, Hanover Insurance Company, to dismiss be allowed. The defendant's motion pursuant to G.L.c 231 § 6(f) for sanctions is denied. The motion of the plaintiff, Fred Davis, for sanctions is denied.

S/Gordon L. Doefer
Justice of the Superior Court

Dated March 10, 1998.

App. 20

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

98-P -1140

FRED DAVIS

VS.

HANOVER INSURANCE COMPANY

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

For substantially the reasons set forth in the Superior Court judge's memorandum a decision (A. 17-24) allowing the defendant's motion to dismiss on grounds of res judicata, we affirm. We call to the attention of the plaintiff the judge's warning that sanctions will be considered if the plaintiff brings another duplicative complaint against the defendant (A. 23-24).

Judgment affirmed

TYPED/ By the court (Jacobs, Gillerman & Lenk, JJ.).

Entered: November 22, 1999.

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS
1412 Courthouse, Boston, Massachusetts 02108
(617) 557-1020

Fred Davis
P.O. Box 721
Everett, Ma 02149

RE: Docket No. FAR-1111

FRED DAVIS
VS.
HANOVER INSURANCE COMPANY

NOTICE OF DENIAL OF F.A.R. APPLICATION

Please take note that the above-captioned Application for Further Appellate Review has been considered by the Court and is denied. The motion to file application late is allowed.

Typed/Susan Mellen, Clerk

Date: January 26, 2000
To: Fred Davis
George R. Suslak, Esquire